IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.758 OF 2003
IN
SUMMARY SUIT NO.2008 OF 2003

Mahendra Jain, proprietor of
M/s.R.K.Metals Plaintiff

versus

Tamilnad Mercantile Bank Ltd. Defendant

Kamal Bulchandani with Mr.Shah i/by Kamal & Co. for plaintiff.
Ms.U.S.Shrivastava i/by Consulta Juris for defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 28th June 2005

PC :

1. Heard Mr.Bulchandani for plaintiff and Ms.Shrivastava for defendants. Plaintiff has instituted this summary suit for recovery of a sum of Rs.5,28,060/- as per the particulars of claim (Exhibit-H). There is no dispute that claim is of interest as against a Banker on the plea that an amount of the plaintiff customer kept in fixed deposit with the bank earns interest on the date of maturity and/or renewal. It is contended that the amount so lying in fixed deposit was firstly utilised for payment of Customs Department by way of a bank guarantee. The balance amount was to be paid to meet the

demand of Income Tax Department. It is contended that for the purposes of furnishing of bank guarantee and to meet the claim of Income Tax Department this fixed deposit was renewed. Upon it's renewal and ultimate maturity, the bank is liable to pay interest as per the terms of fixed deposit.

2. The banks files an affidavit and does not dispute the fixed deposit. It does not dispute that a bank guarantee was given in favour of the Customs Department. It does not also dispute that from this fixed deposit an amount was forwarded to the Income Tax Department to meet the income tax liability of the plaintiff. However, what the banker disputes is that it is not its obligation to pay the interest once the balance in the fixed deposit is attached by Income Tax Department. Subsequently, the claim may have been settled and the Income Tax Department may have consented to accept from the assessee the amount as agreed, but that does not mean that the plaintiff can recover interest on this fixed deposit. Moreso, amount in fixed deposit being subject to an order of attachment by Income Tax Department. It is contended that obligation to pay interest arises on wrongful

deprivation of monies legitimately due and payable. The Bank is not at fault when the amount lying in fixed deposit is subjected to a prohibitory order of Income Tax Authority.

3. In my view, the claim made by the plaintiff will have to be tested on the touchstone not just on the terms of deposit either accepted or renewed but also on the basis that the plaintiff is entitled to claim interest at least from the date the Income Tax Department gives its consent to accept a particular sum. That would be subject to the plaintiff proving that the Income Tax Department's attachment does not in any manner affect the terms and conditions nor does the obligation to pay interest ceases merely because of any prohibitory orders. These are matters which are not within the purview of summary jurisdiction. Moreso, when the claim is not ascertained or fixed. Unconditional leave to defend. Suit transferred to the list of commercial causes. Written Statement to be filed within a period of twelve weeks from today. Usual orders of discovery and inspection. Considering that the claim is made by a customer against a banker, hearing of the suit is expedited.

(S.C.DHARMADHIKARI, J.)